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SUPREME COURT. U. S.
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Supreme Court of the United States

OCTOBER TERM, 1962

No. 45

**FLORIDA LIME AND AVOCADO GROWERS, INC.,
ET AL., APPELLANTS,**

vs.

**CHARLES PAUL, DIRECTOR OF DEPARTMENT
OF AGRICULTURE OF CALIFORNIA, ET AL.**

No. 49

**CHARLES PAUL, DIRECTOR OF DEPARTMENT
OF AGRICULTURE OF CALIFORNIA, ET AL.,
APPELLANTS,**

vs.

**FLORIDA LIME AND AVOCADO GROWERS, INC.,
ET AL.**

**APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

NO. 45 FILED NOVEMBER 20, 1961

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SUPREME COURT OF THE UNITED STATES

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**IN UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION**

Civil Action No. 7648

FLORIDA LIME AND AVOCADO GROWERS, INC., a Florida corporation, and SOUTH FLORIDA GROWERS ASSOCIATION, INC., a Florida corporation, Plaintiffs,

v.

W. C. JACOBSEN, Director of the Department of Agriculture of the State of California, GOODWIN J. KNIGHT, Governor of the State of California, and EDMUND G. BROWN, Attorney General of the State of California, Defendants.

COMPLAINT FOR INJUNCTION TO RESTRAIN ENFORCEMENT
AGAINST PLAINTIFFS OF SECTION 792 OF AGRICULTURAL
CODE OF CALIFORNIA—Filed November 13, 1957

Florida Lime and Avocado Growers, Inc., a corporation, and South Florida Growers Association, Inc., a corporation, plaintiffs, complain of the defendants W. C. Jacobsen, Director of the Department of Agriculture of the State of California, Goodwin J. Knight, Governor of the State of California, and Edmund G. Brown, Attorney General of the State of California, and for their cause of action allege as follows:

I.

The plaintiff Florida Lime and Avocado Growers, Inc. was originally organized under the laws of Florida in 1937 as a cooperative association and in 1956 was reorganized as

[fol. 2] a corporation for profit, with principal place of business in Princeton, Florida. The plaintiff South Florida Growers Association, Inc., was organized as a corporation under the laws of Florida in 1953 and has its principal place of business in Goulds, Florida. The same business was previously operated as a partnership by Harold E. Kendall and Elizabeth H. Kendall, under the trade name of Florida Growers Association, from 1939 to 1953. Both plaintiffs are engaged in the business of marketing avocados grown in Florida, also in the growing of avocados.

II.

The defendant W. C. Jacobsen is the executive officer of the State of California charged with the duty of conducting the state government's Department of Agriculture; the defendant Goodwin J. Knight is governor of the State of California; the defendant Edmund G. Brown is attorney general of the State of California.

III.

The matter in controversy is the right of the plaintiffs to market Florida avocados in California free from restriction of section 792 of the Agricultural Code of California, and plaintiffs' action is within the jurisdiction of the court by virtue of section 1331 of the Judicial Code (28 USC section 1331) in that the controversy arises under the Constitution of the United States, *viz.*; article I, section 8, clause 3, vesting in Congress the power to regulate commerce with foreign nations and among the states, and the Fourteenth Amendment, section 1, prohibiting any state from making or enforcing any law which denies to any person within its jurisdiction the equal protection of the laws. As to each of the plaintiffs, the matter in controversy exceeds the value of \$3,000, exclusive of interest and costs.

IV.

The action is within the jurisdiction of the court, also, [fol. 3] under section 1337 of the Judicial Code (28 USC section 1337) in that the controversy arises under an Act

of Congress regulating commerce, namely, the Marketing Agreement Act of 1937, as amended (7 USC section 601 et seq.).

V.

Said Marketing Agreement Act of 1937 was enacted to establish and maintain orderly marketing conditions for agricultural commodities in interstate commerce, by means of marketing agreements between the Secretary of Agriculture of the United States and the producers and handlers of such commodities and the orders and regulations made by the Secretary to carry out such agreements and to effectuate the purposes of the Act, including orders and regulations to establish and maintain minimum standards of quality and maturity and such grading and inspection requirements for the enumerated agricultural commodities as will effectuate the orderly marketing thereof. (Declaration of policy—7 USC section 602, as amended August 1, 1947.)

VI.

Pursuant to the provisions of the Marketing Agreement Act of 1937 and in accordance with the procedure prescribed, a marketing agreement with respect to the avocados grown in South Florida was made between the Secretary of Agriculture of the United States and the producers and handlers of avocados in the designated counties of Florida, effective upon publication in the Federal Register on June 11, 1954 of the Secretary's marketing order No. 69. (19 FR 3439; 7 CFR part 969, pp. 119-131 and Suppl. pp. 14-18; exhibit A hereto attached.)

VII.

Said marketing order No. 69 was made by the Secretary of Agriculture upon findings, among other, that 80% to 90% of Florida avocados are sold in markets outside the state; [fol. 4] that all handling of avocados grown in the designated production area is in the current of interstate and foreign commerce, or directly affects such commerce; that the growers and handlers of Florida avocados have been accustomed to sell the entire production in fresh channel

markets, including fruit which is immature and otherwise of poor quality, and this has tended to reduce the demand and the prices for Florida avocados; that the situation can be remedied by imposition of official standards of quality and maturity, under a marketing agreement and order, as a condition precedent to the marketing of Florida avocados. (Findings and decision of Secretary on proposed marketing agreement—April 24, 1954, 19 FR 2418, and May 14, 1954, 19 FR 2784; also order No. 69, section 969.0(5).)

VIII.

Said marketing order No. 69 has remained continuously in force since June 11, 1954. It provides that the Secretary of Agriculture shall issue regulations to carry out the marketing agreement and to effectuate the declared policy of the Marketing Agreement Act, including prohibition of the handling of any size or sizes of any variety or varieties of avocados grown in the production area, or the handling of avocados which do not meet such quality and maturity standards as the Secretary may prescribe. (Sec. 969.51.)

IX.

Said order further provides for the establishment of an Avocado Administrative Committee to serve as the agency of the Secretary of Agriculture in the administration of the program to be carried out under said order. The committee consists of nine members, five growers and four handlers of avocados in the designated production area, nominated and appointed in the manner specified in said order. The powers and duties of the committee include the investigation of growing and maturity conditions of avocados in the production area, research relating to the determination of maturity and grade standards for avocados; making recommendations to the Secretary of regulations for the handling of avocados grown in the designated area; and generally, aiding in the administration and enforcement of the marketing agreement and order.

X.

Since June 11, 1954 the Secretary of Agriculture has issued numerous regulations prescribing quality and maturity standards for the avocados handled under said marketing order and prohibiting the handling and marketing of avocados which do not meet the prescribed quality and maturity standards. The quality and maturity regulations for the 1957-1958 South Florida avocado crop adopted under said marketing order No. 69 became effective upon publication in the Federal Register as follows: May 23, 1957—22 FR 3652; June 17, 1957—22 FR 4251; July 22, 1957—22 FR 5679; August 26, 1957—22 FR 6746; September 9, 1957—22 FR 7173; September 16, 1957—22 FR 7357; October 12, 1957—22 FR 8117. Said regulations set forth the earliest permitted shipping dates for each of the varieties of avocados grown in South Florida: an "A" date, for each variety, when fruit of specified minimum weight or diameter may be shipped; a later "B" date, when fruit of somewhat lesser weight or smaller diameter may be shipped; a still later "C" date, with minimum weight or diameter of the fruit then permitted to be shipped; a "D" date, when avocados of the named variety may be shipped regardless of attained weight or diameter. A summary of said 1957-1958 shipping dates for 45 named varieties of avocados grown in South Florida, also for un-named varieties, prepared by the Avocado Administrative Committee, is hereto attached and marked exhibit B.

[fol. 6]

XI.

The Secretary of Agriculture has also issued regulations establishing grade standards for the Florida avocados permitted to be shipped in interstate commerce under said federal marketing order No. 69, *viz.*: regulation issued May 21, 1955 (20 FR 3557) and amended regulation issued April 13, 1956 (21 FR 2409, exhibit C hereto attached), referring for authorization to section 608c of the Agricultural Adjustment Act of 1933, reenacted as part of the Federal Marketing Agreement Act of 1937. Four grades are specified, No. 1 grade, No. 2 grade, a combination grade (not less than 60% of No. 1 grade avocados and balance

No. 2 grade, in each container), No. 3 grade. In each of said grades, among other qualities, the avocados are required to be mature but not overripe, and all avocados failing to meet one of said grade standards are condemned as culls. By supplementary regulation published May 24, 1957 (22 FR 3652), no Florida avocados under No. 2 grade may be shipped in interstate commerce during the crop season from June 3, 1957 to April 30, 1958.

XII.

All avocados handled under said marketing order No. 69 are inspected by the joint inspection service of the State of Florida and the federal government and no load of avocados may lawfully depart from the state without presentation of a certificate of such inspection, showing requisite quality and maturity under the said marketing order.

[fol. 7]

XIII.

At all times since the Florida 1954-55 crop season for avocados, plaintiffs have been duly registered handlers of Florida avocados under said marketing order No. 69. The current certificate of the plaintiff Florida Lime and Avocado Growers, Inc. as such registered handler of avocados was issued by the Avocado Administrative Committee on April 9, 1957. The like certificate of the plaintiff South Florida Growers Association, Inc. was issued on the same date. Both certificates are for the period from April 1, 1957 to March 31, 1958.

XIV.

In each of the crop years since 1954-1955 the plaintiff Florida Lime and Avocado Growers, Inc. has picked, packed and distributed approximately 60,000 bushels of avocados, of average value (f.o.b. Florida) of about \$275,000. In each of said crop years the plaintiff South Florida Growers Association, Inc. has handled approximately 35% to 40% of the avocados grown and marketed in Florida, viz.: 1954-55—166,818 bushels; 1955-56—206,308 bushels; 1956-57—144,048 bushels; 1957-58, to October

23, 1957—74,500 bushels, and estimated for the remainder of the 1957-58 season 100,550 bushels. The estimated value of the avocados handled and to be handled by said plaintiff in the 1957-58 season is approximately \$800,000. Approximately 95% of the avocados handled by plaintiffs are for out of state shipments, on sales in part for plaintiffs' own account and in part for the account of numerous other growers of avocados in South Florida.

XV.

The commercial production of avocados in the United States is concentrated in California and Florida. California, at the present time, is both the largest producer and the largest consumer of avocados. However, there are four or five months of the year when the supply of Florida [fol. 8] avocados exceeds that of California. In the 1955-1956 crop season, when California marketed approximately 1,187,500 bushels of avocados and Florida 506,282 bushels, the Florida supply exceeded that of California in the months of October, November, December and January, and in the 1956-57 season, when the California supply was approximately 575,000 bushels as against 360,927 bushels for Florida, the Florida shipments exceeded those of California in the months of October, November, December, January and February. Thus, during the fall and winter months, when the California supply of avocados is at its lowest ebb, and when also there is a peak consumer demand for avocados because of reduced supply of other fresh fruits, melons and vegetables, California is an especially favorable market for Florida avocados. Also, with the great influx into California of people from the eastern states, where they were consumers of Florida avocados, there is substantial demand in California for the larger low calorie and mild flavored Florida avocados in preference to those grown in California.

XVI.

Plaintiffs are now constantly receiving offers to purchase Florida avocados from dealers in California, but cannot avail themselves of such offers without prohibitive risk of loss if the defendants are permitted to continue to enforce

section 792 of the Agricultural Code of California, pursuant to which no avocado may be marketed in California if it has less than 8% oil content.

XVII.

Chapter 2 of division V of the Agricultural Code of California prescribes standards for fruits, nuts and vegetables that may lawfully be marketed in the state. With respect to avocados, the prescribed standard is as follows:

[fol. 9] "Sec. 792. Avocados.

(*Freedom from defects: Tolerance.*) Avocados shall be free from all defects, including but not restricted to those hereinafter mentioned, which singly or in the aggregate cause a waste of 10 per cent or more, by weight, of the entire avocado, including the skin and seed. Not more than 5 per cent, by count, of the avocados in any one container or bulk lot may be below the foregoing requirement.

(*Definition.*) "Defect" includes damage due to insect injuries, freezing injury, decay, rancidity, or other causes.

(*Oil content.*) All avocados, at the time of picking, and at all times thereafter, shall contain not less than 8% of oil, by weight of the avocado excluding the skin and seed."

XVIII.

Section 782 provides that chapter 2 shall be enforced by the Director of Agriculture, and by the commissioners of each county of the state, their deputies and inspectors, under the supervision and control of the director.

XIX.

Section 784 of chapter 2 provides:

"Sec. 784. *Preparation, etc., of non conforming fruits, nuts or vegetables.* It is unlawful to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported or sell any fruits, nuts or vegetables in bulk or in any container or subcontainer unless such fruits, nuts and vegetables, and their containers, conform to the provisions of this chapter."

[fol. 10]

XX.

As to the containers of avocados, section 788 provides that the standards for containers of fruits, nuts and vegetables prescribed by the Agricultural Code of California are not applicable to containers established as standard by the applicable laws or regulations of the United States. No like provision is contained in the Agricultural Code of California with respect to the quality standards for avocados established by the laws or regulations of the United States.

XXI.

Other sections of said chapter 2 provide for enforcement of the declared standards by condemning non-complying fruits, nuts and vegetables as public nuisances, subject to seizure and destruction in actions to abate such nuisances (section 785), by imposition of penalties in civil actions brought by the Director of the Department of Agriculture (section 785.6), by arrest for transportation of fruits, nuts and vegetables in violation of said chapter (section 786), by making the violation of any of the provisions of said chapter a misdemeanor punishable by fine or imprisonment, or both (section 831).

XXII.

The avocados grown in Florida trace back to plants found in the tropical lowlands of the West Indies and Guatemala; the California avocados come primarily from plants originally found in the colder and less humid regions of Mexico and Guatemala. The Florida avocados are grown in warmer and more humid areas than in California; the Florida fruit is generally much larger than the California fruit, with higher water content and much lower fat or oil content. Some of the highest grade Florida avocados, when fully mature, have oil content of less than 6% and as low as 2%; the principal varieties of California [fol. 11] avocados, notably the Fuerte and Hass, attain oil content of 25% to 30%. While most of the Florida avocados come to full maturity with less than 8% oil content, the commercially dominant California varieties attain 8% oil content at a stage of growth far short of maturity.

XXIII.

Plaintiffs allege that oil content is not a scientifically valid standard of maturity or quality of avocados, particularly when applied to the avocados grown in Florida, and that the maturity of these avocados is assured by correlating the picking dates for each variety with attained weight or size, as is done by the Avocado Administrative Committee and the Secretary of Agriculture under the Florida marketing agreement aforesaid.

XXIV.

All avocados handled by plaintiffs are picked, packed and shipped for sale in compliance with the federal marketing agreement and regulations aforesaid governing the marketing of Florida avocados, and all avocados shipped by plaintiffs in interstate commerce are inspected by the joint federal and state inspection service in Florida and certified as mature and in compliance with the grade standards established by the Secretary of Agriculture pursuant to the authority vested in him by the Federal Marketing Agreement Act of 1937.

XXIV.

As above indicated, most Florida avocados, at the time of picking permitted by the applicable laws and regulations of the United States, and at the time they are certified as mature pursuant to said laws and regulations, have oil content of less than the 8% made prerequisite to sale in California by section 792 of the Agricultural Code of California. As to the Florida avocados which may possibly [fol. 12] attain the 8% oil content, there is risk that one or two of the avocados selected out of entire shipment as part of the sample batch to be tested for oil content may fail to pass the 8% test, thereby subjecting the entire load to condemnation. Because of the great distance between Florida and California and the perishable nature of the fruit, it is impracticable for a Florida shipper to recondition the load by substituting other avocados for those found to be of less than 8% oil content, leaving no practical recourse except to try to sell the rejected avocados in some other western market.

XXV.

Avocados are usually shipped by plaintiffs in truck loads of approximately 2,000 lugs, weighing 34,000 pounds and containing approximately 38,000 avocados. The value of such a load of avocados at prevailing wholesale prices, delivered in California, is \$4,000 to \$5,000, and if rejected for sale in California the shift to another western market entails risk of loss of a large part of the value of the entire load.

XXVI.

Because of the 8% oil content requirement of section 792 of the Agricultural Code of California, the plaintiffs have been deterred from making shipments of Florida avocados to California. Such shipments have been made with extreme caution to avoid rejection for alleged insufficient oil content and have represented only a small fraction of the avocados handled by plaintiffs. Notwithstanding such caution, shipments of Florida avocados made by plaintiffs to purchasers or consignees in California have been rejected by the defendant W. C. Jacobsen and officers of the Department of Agriculture of California under his control for the sole reason that one or more of the avocados in each load or lot failed to meet the 8% oil test. Instances of such rejected shipments made by the plaintiff Florida Lime and [fol. 13] Avocado Growers, Inc. include 1,129 lugs of avocados shipped to Safeway Stores at Oakland, California, on November 10, 1955, for which plaintiff was to receive \$2,088.65, reshipped to Salt Lake City and sold at net yield to plaintiff of \$711.60; 2,083 lugs of avocados shipped November 12, 1955 to Safeway Stores at Sacramento and Oakland, California, for which plaintiff was to receive \$3,853.55, reshipped to Portland, Oregon, and sold at net yield to plaintiff of \$1,681.03; 2,208 lugs of avocados shipped November 14, 1955 to Safeway Stores at Oakland, California, for which plaintiff was to receive \$4,084.80, reshipped to Seattle, Washington, and sold at net yield to plaintiff of \$1,788.20; 900 lugs of avocados shipped December 8, 1955, to Mendelson-Zeller Company at Los Angeles,

California, for which plaintiff was to receive \$2,200, re-shipped to El Paso, Texas, and sold at net yield to plaintiff of \$548.

XXVII.

The plaintiff South Florida Growers Association, Inc. likewise made shipments of Florida avocados to California which were rejected for alleged oil content under 8% and had to be shipped to other markets. Such avocados were shipped on consignment to plaintiff's sales agent, Calavo, Inc., and after rejection in California reshipped to Phoenix, Arizona, Portland, Oregon, or Seattle, Washington, and sold at prices lower than those obtainable in California, in each instance with added cost of handling and cartage.

XXVIII.

Plaintiffs allege that the sole effect of the 8% oil requirement of section 792 of the Agricultural Code of California, when applied to Florida avocados, is to bar the sale in California by plaintiffs and others of fruit that is mature and wholesome, although of lesser oil content, and to grant a monopoly in the sale of avocados in California to growers [fol. 14] and handlers of avocados that happen to attain 8% or higher oil content, but are not more healthful or edible than avocados which mature with less than 8% oil content; that prohibition of sale in California of Florida avocados solely because of alleged insufficient oil content is an arbitrary and unwarranted obstruction of the free flow of commerce between the states, in violation of article I, section 8, clause 3 of the Constitution of the United States.

XXIX.

Plaintiffs further allege that the denial to plaintiffs of the right to sell in California avocados grown in Florida, when of less than 8% oil content but in no way inimical to the health of the persons who may consume such avocados, while permitting the sale of avocados with 8% or greater oil content but not better fit for consumption, violates the provision of section 1 of the Fourteenth Amendment of the Constitution of the United States that no state shall make

or enforce any law which denies to any person within its jurisdiction the equal protection of the laws.

XXX.

Plaintiffs further allege that section 972 of the Agricultural Code of California is unconstitutional, when applied to avocados delivered for sale in interstate commerce in compliance with the procedures and standards established by the Secretary of Agriculture of the United States pursuant to the authority vested in him by the Federal Marketing Agreement Act of 1937, and that the defendants should be enjoined by decree of this court from demanding compliance with different maturity or quality standards as a condition precedent to delivery and sale of such avocados in California.

XXXI.

Because of the arbitrary exclusion of most Florida [fol. 15] avocados from the California market, by imposition of the 8% oil test, plaintiffs are limited to sale of their fruit in other markets in competition with the growers and handlers of avocados who enjoy a virtual monopoly in the California market, at great economic detriment and irreparable loss to plaintiffs.

XXXII.

No practical or adequate remedy is available to plaintiffs in the premises save by the equitable process of injunction.

Wherefore plaintiffs pray:

A. That this case may be heard and determined by a three-judge court, as provided by Title 28 U.S. Code, sections 2281 and 2284.

B. That enforcement of section 792 of the Agricultural Code of California be declared in derogation of article I, section 8, clause 3 of the Constitution of the United States, and of section 1 of the Fourteenth Amendment of the Constitution of the United States, when applied to prohibit delivery and sale in California of avocados grown in Florida

and shipped in interstate commerce, solely upon the ground that such avocados have less than 8% oil content.

C. That the court may further adjudicate that prohibition of delivery and sale in California of avocados grown in Florida and shipped in interstate commerce in compliance with the orders and regulations made by the Secretary of Agriculture of the United States, acting pursuant to the authority vested in him by the Federal Marketing Agreement Act of 1937, is an impermissible nullification of the power exercised by Congress under article I, section 8, clause 3 of the Constitution of the United States to regulate commerce among the states.

D. That the defendants and all officers, agents and employees of the State of California under their control may [fol. 16] be restrained by interlocutory and permanent injunction orders of the court from enforcing or attempting to enforce against the plaintiffs the provisions of section 792, chapter 2, division V of the Agricultural Code of California, by any of the methods provided in said chapter for enforcement of section 792, with respect to delivery and sale in California of avocados grown in Florida, when such enforcement is based upon alleged insufficient oil content of such avocados, or when such enforcement is based upon standards of quality or maturity for such avocados other than the applicable standards established for shipment of such avocados in interstate commerce by the laws of the United States and the regulations made by the Secretary of Agriculture pursuant thereto.

E. That plaintiffs may be granted such other relief in the premises as the court may deem just.

Florida Lime and Avocado Growers, Inc. and South Florida Growers Association, Inc., plaintiffs, by
Isaac E. Ferguson, attorney for plaintiffs.

Isaac E. Ferguson, attorney for plaintiffs.

(Paul H. Leffmann, of Chicago, Illinois, co-attorney for plaintiffs).

[fol. 17]

EXHIBIT "A" TO COMPLAINT

AVOCADOS

EFFECTIVE JUNE 11, 1954

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

[Reprinted from Federal Register of June 11, 1954]

PART 969—AVOCADOS GROWN IN SOUTH FLORIDA

SUBPART—ORDER REGULATING HANDLING

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AUTHORITY: §§ 969.0 to 969.71 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 969.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, effec-

tive thereunder (7 CFR Part 900; 19 F. R. 57), a public hearing was held at Homestead (Modella), Florida, from March 8 to March 11, 1954, both dates inclusive, upon a proposed marketing agreement and a proposed marketing order regulating the handling of avocados grown in South Florida. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order regulates the handling of avocados grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the proposed marketing agreement upon which a hearing has been held;

(3) The said order is limited in its application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of such production area would not effectively carry out the declared policy of the act;

(4) The said order prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of avocados covered thereby; and

(5) All handling of avocados grown in the production area, as defined herein, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is hereby found and determined on the basis hereinafter indicated that good cause exists for making the provisions of this order effective not later than the date of publication in the Federal Register; and that it would be contrary to the public interest to postpone such effective date until 30 days after publication (60 Stat. 237; 5 U. S. C. 1001 et seq.). As soon as

practical after such effective time, it will be necessary to establish the Avocado Administrative Committee, the agency charged with the administration of this program, and for the Avocado Administrative Committee and the Secretary to initiate various actions of both organizational and regulatory natures, including the formulation and promulgation of rules and regulations under the program, which should be completed by the beginning of the harvesting and marketing season. Such season normally starts shortly after the middle of June. The time during which such actions will be concluded should be such that handlers will receive such notice thereof as will enable them reasonably and adequately to prepare for operations under the program. The provisions of the order are well known to the handlers of avocados, since the public hearing in connection with the entire order was concluded March 11, 1953, and the recommended decision and final decision were published in the Federal Register on April 24, 1954 (19 F. R. 2418) and May 21, 1954 (19 F. R. 2784), respectively. Copies of the regulatory provisions of this order were made available to all known interested parties, and compliance with such provisions will not require advance preparation on the part of persons subject thereto which cannot be completed prior to the effective date of regulation pursuant hereto.

(c) *Determinations.* It is hereby determined that:

(1) The marketing agreement regulating the handling of avocados grown in South Florida, upon which the aforesaid public hearing was held, has been executed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping avocados covered by this order) who, during the period April 1, 1953, through March 31, 1954, handled not less than 50 percent of the volume of avocados covered by this order;

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (April 1, 1953, through March 31, 1954), were engaged, within the pro-

duction area specified in this order, in the production of avocados for market; such producers having also produced for market at least two-thirds of the volume of avocados represented in such referendum.

It is, therefore, ordered. That, on and after the effective date hereof, the handling of avocados grown in the said production area shall be in conformity to, and in compliance with, the terms and conditions of the aforesaid order; and the terms and conditions of said order are as follows:

DEFINITIONS

§ 969.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any Officer or employee of the United States Department of Agriculture who is, or may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture of the United States.

§ 969.2 *Act.* "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.).

§ 969.3 *Person.* "Person" means an individual, partnership, corporation, association or any other business unit.

§ 969.4 *Production area.* "Production area" means the counties of Brevard, Osceola, Polk, Hillsborough, and Pinellas in the State of Florida, and all of the counties of that State situated south of such counties.

[fol. 18] § 969.5 *Avocados.* "Avocados" means all varieties of avocados grown in the production area.

§ 969.6 *Fiscal year.* "Fiscal year" means the twelve-month period ending March 31 of each year.

§ 969.7 *Committee.* "Committee" means the Avocado Administrative Committee established pursuant to § 969.20.

§ 969.8 *Grower.* "Grower" is synonymous with producer and means any person who produces avocados for market and who has a proprietary interest therein.

§ 969.9 *Handler*. "Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting avocados owned by another person) who handles avocados or causes avocados to be handled.

§ 969.10 *Handle*. "Handle" means to sell, consign, deliver, or transport avocados within the production area or between the production area and any point outside thereof in the continental United States or Canada: *Provided*, That such term shall not include: (a) The sale or delivery of avocados to a handler, registered as such with the committee in accordance with such rules and regulations as it may prescribe with the approval of the Secretary, who has facilities within the production area for preparing avocados for market; (b) the delivery of avocados to such a handler solely for the purpose of having such avocados prepared for market; or (c) the transportation of avocados by a handler, so registered with the committee, from the grove to his packing facilities within the production area for the purpose of having such avocados prepared for market. In the event a grower sells his avocados to a handler who is not so registered with the committee, such grower shall be the first handler of such avocados.

§ 969.11 *District*. "District" means the applicable one of the following described subdivisions of the production area:

(a) "District 1" shall include Dade County.

(b) "District 2" shall include all of the production area except Dade County.

ADMINISTRATIVE BODY

§ 969.20 *Establishment and membership*. There is hereby established an Avocado Administrative Committee consisting of nine members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Five of the members and their respective alternates shall be growers who shall not be handlers or employees of handlers. Four of the members and their respective alternates shall be handlers or employees of handlers. The five members of the committee

who shall be growers and who shall not be handlers, or employees of handlers, are hereinafter referred to as "grower" members of the committee; and the four members who shall be handlers, or employees of handlers, are hereinafter referred to as "handler" members of the committee. Four of the five grower members shall be producers of avocados in District 1, and one grower member shall be a producer of avocados in District 2. Three of the four handler members shall be handlers, or employees of handlers, of avocados in District 1, and one handler member shall be a handler, or an employee of a handler, of avocados in District 2.

§ 969.21 *Term of office.* The term of office of each member and alternate member of the committee shall begin April 1, and shall terminate March 31 of the following year. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified. The consecutive terms of office of members shall be limited to three terms.

§ 969.22 *Nomination—(a) Initial members.* Nominations for each of the five initial grower members and four initial handler members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than ten calendar days prior to the effective date hereof. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 969.20.

(b) *Successor members.* (1) Nominations for successor members of the committee, and their respective alternates, shall be made at meetings of growers and handlers in each

district. Such meetings shall be held at such times (on or before February 15 of each year) and places as the committee shall designate. Such nominations shall be submitted promptly to the Secretary by the committee. The committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of such meetings.

(2) Only growers who are present at such nomination meetings, or represented at such nomination meetings by duly authorized agents, shall participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces avocados. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(3) Only handlers who are present at such nomination meetings, or represented at such meetings by duly authorized agents, shall participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles avocados, which vote shall be weighted by the volume of avocados shipped by such handler during the then current fiscal year. No handler shall participate in the election of nominees in more than one district in any one fiscal year.

§ 969.23 *Selection.* From the nominations made pursuant to § 969.22, or from other qualified persons, the Secretary shall select the five grower members of the committee, the four handler members of the committee, and an alternate for each such member.

§ 969.24 *Failure to nominate.* If nominations are not made within the time and in the manner prescribed in § 969.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 969.20.

§ 969.25 *Acceptance.* Any person selected by the Secretary as a member or as an alternate member of the com-

mittee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 969.26 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 969.22 and 969.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 969.20.

§ 969.27 *Alternate members.* An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

§ 969.28 *Powers.* The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 969.29 *Duties.* The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

[fol. 19] (c) To submit to the Secretary as soon as practicable after the beginning of each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a certified public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate growing and maturity conditions of avocados, and to assemble data in connection therewith;

(i) To engage in such research relating to the determination of maturity and grade standards for avocados as may be approved by the Secretary;

(j) To submit to the Secretary such available information as he may request;

(k) To notify, as provided in this part, producers and handlers of all meetings of the committee to consider recommendations for regulation;

(l) To give the Secretary the same notice of meetings of the committee as is given to its members;

(m) To consult with such representatives of growers or groups of growers as may be deemed necessary and to pay the travel expenses incurred by such representatives in attending committee meetings at the request of the com-

mittee: *Provided*, That the committee shall not pay the travel expenses of more than three such representatives in connection with any one meeting of the committee; and

(n) To investigate compliance with the provisions of this part.

§ 969.30 *Procedure*. (a) Six members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require at least five concurring votes: *Provided*, That at least one handler member shall approve the action.

(b) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 969.31 *Expenses and compensation*. The members of the committee, and their respective alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and shall also receive compensation, as determined by the committee, which shall not exceed \$10 per day or portion thereof spent in performing such duties.

§ 969.32 *Annual report*. The committee shall, prior to March 31 of each fiscal year, prepare and mail an annual report to the Secretary, and to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review, by districts, of the regulatory operations during the fiscal year; (b) an appraisal of the effect of such regulatory operations upon the avocado industry; and (c) any recommendations for changes in the program.

EXPENSES AND ASSESSMENTS

§ 969.40 *Expenses*. The committee is authorized to incur such expenses as the Secretary finds are reasonable and may be necessary to enable the committee to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal year. The funds to

cover such expenses shall be acquired by the levying of assessments as provided for in § 969.41.

§ 969.41 *Assessments.* (a) Each person who first handles avocados shall, with respect to the avocados so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of avocados handled by him as the first handler thereof during the applicable fiscal year, and the total quantity of avocados so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any finding by the Secretary relative to the expense which may be incurred: *Provided, That*, in no case, shall the rate of assessment exceed 10 cents per 55-pound box, or an equivalent quantity, of avocados. Such increase shall be applied to all avocados handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, and may borrow money in any amount not to exceed 10 percent of the estimated expenses set forth in its budget for the then current fiscal year.

§ 969.42 *Accounting.* (a) If, at the end of a fiscal year, the assessments collected are in excess of the expenses incurred, each person entitled to a proportionate refund of the excess assessment shall be credited with such refund against the operations of the following fiscal year. Any handler may demand payment of such a refund, and the refund shall be paid to him: *Provided, That* any sum paid by a person in excess of his pro rata share of the expenses

during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations due the committee from such person.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part, and shall be accounted for in the manner provided in this part. The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

REGULATIONS

§ 969.50 *Recommendations for regulation.* (a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of avocados grown in District 1 or District 2 in the manner provided in § 969.51, it shall so recommend to the Secretary.

(b) In arriving at its recommendations pursuant to paragraph (a) of this section, the committee shall give consideration to such of the following factors as may be applicable: (1) The estimated total production and shipments of each variety of avocados, including avocados grown in other areas; (2) the time of bloom and growing conditions during the development of the crop; (3) the quality of the avocado crop; (4) the anticipated demand for avocados; and (5) other available information having a bearing on the market for avocados. With each recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated, and such other available information as the Secretary may request.

(c) All meetings of the committee held for the purpose of formulating recommendations for regulations shall be open to growers and handlers. The committee shall give notice of such meetings to growers and handlers by mailing such notice to each grower and handler who has filed his address with the committee and requested such notice.

§ 969.51 *Issuance of regulations.* (a) The Secretary shall regulate, in the manner specified in this section, the handling of avocados whenever he finds, from the recommenda-

tions and information submitted by the committee or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Prohibit, prior to such time as shall be specified, the handling of any size or sizes of any variety or varieties of avocados grown in District 1 or District 2; and

(2) Prohibit the handling of any variety or varieties of avocados grown in District 1 or District 2 which do not meet such quality and maturity standards as shall be prescribed.

(b) The committee shall be informed immediately of any such regulations issued by the Secretary and the committee shall promptly give notice thereof to growers and handlers.

§ 969.52 *Modification, suspension, or termination of regulations.* (a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 969.51 should be modified, suspended or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of avocados in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 969.53 *Exemption certificate.* Whenever a regulation is in effect pursuant to paragraph (a) (1) of § 969.51, the committee shall issue one or more exemption certificates to any person who furnishes proof, satisfactory to the committee, that his avocados of a particular variety are mature prior to the time such variety may be handled under such regulation. Such exemption certificates shall authorize the person to whom the certificates are issued to handle, or

have handled, only that portion of his avocados of the particular variety which the committee has determined to be mature. The committee shall adopt, with the approval of the Secretary, procedural rules by which such exemption certificates will be issued and the avocados covered thereunder may be handled. Exemption certificates shall be transferred to the handler of the avocados covered by such certificates at the time the avocados are delivered to such handler.

§ 969.54 *Inspection and certification.* Whenever the handling of any variety of avocados is regulated pursuant to § 969.51, each handler who handles avocados shall, prior thereto, cause each lot of avocados handled to be inspected by the Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided*, That such inspection and certification shall not be required whenever the avocados previously have been so inspected and certified. Promptly thereafter, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection with respect to such handling.

§ 969.55 *Avocados not subject to regulations.* Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 969.41, 969.51, and 969.54, and the regulations issued thereunder, handle avocados (a) for consumption by charitable institutions; (b) for distribution by relief agencies; (c) for export other than to Canada; (d) for commercial processing into products; or (e) in such minimum quantities or types of shipments as the committee, with the approval of the Secretary, may prescribe. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent avocados handled under the provisions of this section from entering channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle avocados pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser

or receiver that the avocados will not be used for any purpose not authorized by this section.

§ 969.60 *Reports.* (a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, the following: (1) The quantities of each variety of avocados he received; (2) a complete record of the quantities disposed of by him, segregated as to varieties and as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such fruit; (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the fruit was handled, together with the destination of each such exempted disposition, and of all fruit handled pursuant to § 969.55; and (5) the quantity of each variety held by him at the end of the period.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

MISCELLANEOUS PROVISIONS

§ 969.61 *Compliance.* Except as provided in this part, no person shall handle avocados, the shipment of which have been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle avocados except in conformity with the provisions of this part and the regulations issued under this part.

§ 969.62 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any

time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 969.63 *Effective time.* The provisions of this part shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 969.64.

§ 969.64 *Termination.* (a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal year whenever he finds that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production of avocados for market: *Provided*, That such termination is announced on or before March 15 of the then current fiscal year. The Secretary shall, as soon as practicable after the close of the fiscal year ending March 31, 1956, conduct a referendum of producers and a poll of handlers to determine whether the continuation of this part is favored by them. Producers entitled to vote in such referendum shall be those who, during the fiscal year ending March 31, 1956, were engaged in producing avocados for market and the poll shall be confined to handlers who handled avocados in that same fiscal year. If it develops from said referendum and poll that (1) less than two-thirds of the producers, by number or volume of production represented in said referendum, favor the continuance of this part, or (2) handlers representing more than one-half the volume of avocados handled favor termination of this part, the Secretary shall thereupon terminate this part.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 969.65 *Proceedings after termination.* (a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 969.66 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) effect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this [fol. 21] part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 969.67 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue

of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 969.68 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 969.69 *Derogation.* Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 969.70 *Personal liability.* No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 969.71 *Separability.* If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.


Dated: June 8, 1954.

[SEAL]

JOHN H. DAVIS,
Assistant Secretary of Agriculture.

[fol. 22]

EXHIBIT "B" TO COMPLAINT

(See opposite) 

AVOCADO SHIPPING DATES
1957-58 Season
(Issued October 8, 1957)

Variety	Date A	Min. Wt.	Min. Diam.	Date B	Min. Wt.	Min. Diam.	Date C	Min. Wt.	Min. Diam.	Date D
Fuchs	6-17	12	3 1/16	7-1	11	2 15/16	7-15	10	2 13/16	8-5
Pollock	7-1	18	3 11/16	7-22	16	3 8/16	8-5	14	3 5/16	8-26
Simmonds	7-1	16	3 9/16	7-22	14	3 7/16	8-5	12	3 4/16	8-26
Hardee	7-1	16	3 5/16	7-15	14	3 2/16	7-29	12	2 15/16	8-26
Nadir	7-8	14	3 5/16	7-22	12	3 2/16	8-5	10	2 14/16	9-2
Trapp	7-29	14	3 9/16	8-12	12	3 7/16	8-26	10	3 3/16	9-16
Waldin	8-5	16	3 9/16	8-19	14	3 6/16	9-2	11	3 2/16	9-30
Petersen	8-5	12	3 6/16	8-19	11	3 4/16	9-2	10	3 2/16	9-23
Pinelli	8-19	18		8-26	16		9-2	12		9-23
Tonnage	8-26	14	3 5/16	9-2	12	3 2/16	9-9	10	2 14/16	9-23
Fairchild	8-26	16	3 10/16	9-9	14	3 7/16	9-23	11	3 2/16	10-7
(Booth 8	9-16	15	3 6/16	9-30	13	3 4/16	10-14	11	3 1/16	--
(Booth 8	--	--	--	--	--	--	10-28	10	2 15/16	11-18
Nirody	9-16	18	3 15/16	9-30	15	3 11/16	10-14	12	3 6/16	11-4
Simpson	9-30	16		10-14	14		10-28	10		11-18
Rue	10-7	30	4 3/16	10-14	24	3 15/16	10-28	18	3 9/16	11-11
B. Prince	10-7	16		10-21	14		11-4	10		11-25
(Lula	10-7	18	3 10/16	10-21	16	3 7/16	11-4	14	3 4/16	--
(Lula	--	--	--	--	--	--	11-18	11	2 15/16	12-9
Booth 7	10-14	16	3 10/16	10-28	14	3 8/16	11-11	11	3 2/16	12-2
Sherman	10-14	16		10-28	14		11-11	10		12-2
Vaca	10-14	16	3 9/16	10-28	14	3 7/16	11-11	10	3 0/16	12-2
Marcus	10-14	32								1P-25
Hickson	10-21	14	3 4/16	11-4	12	3 1/16	11-13	10	2 15/16	12-9
Collinson	10-21	16	3 11/16	11-4	14	3 8/16	11-18	10	3 1/16	12-9
Avon	10-21	14	3 8/16	11-4	12	3 5/16	11-18	9	2 15/16	12-9
Booth 5	10-21	16	3 11/16	11-4	14	3 9/16	11-18	10	3 3/16	12-9
Blair	10-21	16		11-4			11-18			12-9
Nelson	10-21	14	3 8/16	11-4	12	3 5/16	11-18	10	3 1/16	12-9
Winslowson	10-28	18	3 14/16	11-11	16	3 12/16	11-25	10	3 2/16	12-24
Monroe	10-28	24		11-25	20		12-16	14		1-6
Hall	10-21	24	3 13/16	11-4	18	3 7/16	12-2	14	3 3/16	12-24
Herman	11-4	16	3 9/16	11-18	14	3 7/16	12-2	10	3 1/16	12-24
Booth 10	11-4	16		11-18	14		12-2	10		12-24
Booth 11	10-28	16	3 12/16	11-11	14	3 9/16	12-2	10	3 3/16	12-24
Ajax(B. 7B)	11-11	18	3 12/16	11-25	15	3 9/16	12-9	11	3 3/16	12-31
Booth 3	11-11	16	3 9/16	11-25	14	3 7/16	12-9	10	3 1/16	12-31
Booth 1	11-18	16	3 11/16	12-2	14	3 8/16	12-16	10	3 1/16	1-6
Taylor	11-18	14	3 4/16	12-2	12	3 2/16	12-16	9	2 13/16	1-6

Blair	10-21	16		11-4			11-18			12-9
Nelson	10-21	14	3 8/16	11-4	12	3 5/16	11-18	10	3 1/16	12-9
Winslowson	10-28	18	3 14/16	11-11	16	3 12/16	11-25	10	3 2/16	12-24
Monroe	10-28	24		11-25	20		12-16	14		1-6
Hall	10-21	24	3 13/16	11-4	18	3 7/16	12-2	14	3 3/16	12-24
Herman	11-4	16	3 9/16	11-18	14	3 7/16	12-2	10	3 1/16	12-24
Booth 10	11-4	16		11-18	14		12-2	10		12-24
Booth 11	10-28	16	3 12/16	11-11	14	3 9/16	12-2	10	3 3/16	12-24
Ajax(B. 7B)	11-11	18	3 12/16	11-25	15	3 9/16	12-9	11	3 3/16	12-31
Booth 3	11-11	16	3 9/16	11-25	14	3 7/16	12-9	10	3 1/16	12-31
Booth 1	11-18	16	3 11/16	12-2	14	3 8/16	12-16	10	3 1/16	1-6
Taylor	11-18	14	3 4/16	12-2	12	3 2/16	12-16	9	2 13/16	1-6
Dunedin	11-18	16	3 10/16	12-2	14	3 8/16	12-16	10	3 1/16	1-6
Choquette	10-28	30	4 5/16	11-18	22	3 15/16	12-2	18	3 11/16	1-6
Linda	12-9	18		12-23	15		1-6	12		1-20
Byars #1	12-9	16		12-23	14		1-6	10		1-27
Nabal	12-9	14	3 8/16	12-23	12	3 5/16	1-6	9	3 0/16	1-27
Wagner	12-16	12	3 5/16	12-30	10	3 2/16	1-13	8	2 14/16	2-3
Schmidt	1-27	16		2-10	14					2-24
Itzamna	2-24									2-24

Column "A" No fruit may be shipped before this date.

Column "D" No restrictions on size or weight on or after this date.

All weights in ounces, diameters in inches. Where a minimum weight and minimum diameter are given, fruit which meets either standard may be shipped.

Schedule for shipment of seedlings, un-named varieties and varieties not listed elsewhere in the regulations

West Indian Type: None to be shipped before June 3
June 3 to June 17, none smaller than 16 oz.
June 17 to July 15, none smaller than 14 oz.
July 15 to Sept. 9, none smaller than 12 oz.
On or after Sept. 9, no size restrictions

Guatemalan Type None to be shipped before Sept. 9
and Guatemalan x Sept. 9 to Oct. 7, none smaller than 14 oz.
W. Indian Hybrids: Oct. 7 to Dec. 23, none smaller than 12 oz.
On or after Dec. 23, no size restrictions

Exceptions applicable to seedlings and unlisted varieties: Avocados of the seedling or unlisted variety category which normally change color to any shade of red or purple when fully mature may be shipped, regardless of weight, when any portion of the skin of such fruit has changed to the color it normally has when fully mature. Any seedling or unlisted variety may be shipped, without regard to weight, if the exterior of the seedcoat is of a brown color which is characteristic of a mature avocado, as determined by representative sampling prescribed by the Federal-State Inspection Service.

[fol. 23]

EXHIBIT "C" TO COMPLAINT

FLORIDA AVOCADO ORDER 69
AS AMENDED

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

AVOCADO ADMINISTRATIVE COMMITTEE
RULES AND REGULATIONS

GRADE STANDARDS, AS AMENDED

[Reprinted from the Federal Register of April 13, 1956]

§ 969.130 *Quality regulations.* Quality regulations recommended and established pursuant to § 969.50 shall be on the basis of the following specifications or appropriate modifications thereof:

(a) *No. 1 grade.* "No. 1 grade" consists of avocados of similar varietal characteristics which are mature but not overripe, well formed, clean, well colored, well trimmed, and which are free from decay, anthracnose, freezing injury and free from damage caused by bruises, cuts or other skin breaks, pulled stems, russeting or similar discoloration, scars or scab, sunburn, sunscald or sprayburn, cercospora spot, other disease, insects, or mechanical or other means. In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of this grade: *Provided*, That not more than one-half of this amount, or 5 percent, may be affected by anthracnose or decay, including therein not more than 1 percent for decay. (See Application of Tolerances and Standard Pack Requirements.)

(b) *Combination grade.* Any lot of avocados may be designated "Combination grade" when not less than 60 percent, by count, of the avocados in each container meet the requirements of the No. 1 grade and the remainder meet the requirements of the No. 2 grade. In order to allow for variations incident to proper grading and handling, not

more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of the No. 2 grade: *Provided*, That not more than one-half of this amount, or 5 percent, may be affected by anthracnose or decay, including therein not more than 1 percent for decay. No part of any tolerance shall be allowed to reduce for the lot as a whole the percentage of No. 1 fruit required or specified in the combination, but individual containers may have not more than 10 percent less than the percentage of No. 1 fruit required or specified. (See Application of Tolerances and Standard Pack Requirements.)

(c) *No. 2 grade*. "No. 2 grade" consists of avocados of similar varietal characteristics which are mature but not overripe, fairly well formed, clean, fairly well colored, well trimmed and which are free from decay, freezing injury and free from serious damage caused by anthracnose, bruises, cuts or other skin breaks, pulled stems, russetting or similar discoloration, scars or scab, sunburn, sunscald or sprayburn, cercospora spot, other disease, insects, or mechanical or other means. In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of this grade: *Provided*, That not more than one-half of this amount, or 5 percent, shall be allowed for serious damage by anthracnose or decay, including therein not more than 1 percent for decay. (See Application of Tolerances and Standard Pack Requirements.)

(d) *No. 3 grade*. "No. 3 grade" consists of avocados of similar varietal characteristics which are mature but not overripe, which are not badly misshapen, and which are free from decay and free from serious damage caused by anthracnose and from very serious damage caused by freezing injury, bruises, cuts or other skin breaks, pulled stems, russetting or similar discoloration, scars or scab, sunburn, sunscald or sprayburn, cercospora spot, other disease, insects, dirt, or mechanical or other means. In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of this grade.

including therein not more than 2 percent of decay. (See Application of Tolerances and Standard Pack Requirements.)

(e) *Unclassified*.—"Unclassified" consists of avocados which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade, as used herein, but is provided as a designation to show that no grade has been applied to the lot.

(f) *Standard pack*. (1) The avocados shall be packed in accordance with good commercial practice and the pack shall be at least fairly tight. The size of the avocados may be specified by count. The weight of the smallest fruit in a container shall be not less than 75 percent of the weight of the largest fruit.

(2) In order to allow for variations incident to proper packing and sizing, not more than 5 percent of the containers may fail to meet the requirements for fairly tight. And not more than 5 percent, by count, of the avocados in any container may weigh less than 75 percent of the weight of the largest fruit: *Provided*, That no fruit, in any container, shall be less than 60 percent of the weight of the largest fruit.

(g) *Application of tolerances*. The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(1) For packages which contain more than 20 avocados and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 20 avocados and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package.

(2) For packages which contain 20 avocados or less, individual packages shall have not more than double the

tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package.

(b) *Definitions*—(1) *Similar varietal characteristics*. "Similar varietal characteristics" means that the avocados in any container are similar in shape, texture and color of skin and flesh.

(2) *Mature*. "Mature" means that the avocado has reached a stage of growth which will insure a proper completion of the ripening process.

(3) *Overripe*. "Overripe" means that the avocado is dead ripe with flesh soft or discolored and past commercial use.

(4) *Well formed*. "Well formed" means that the avocado has the normal shape characteristic of the variety.

(5) *Clean*. "Clean" means that the avocado is practically free from dirt, staining or other foreign material.

(6) *Well colored*. "Well colored" means that the avocado has the color characteristic of the variety.

(7) *Well trimmed*. "Well trimmed" means that the stem, when present, is cut off fairly smoothly at a point not more than one-fourth inch beyond the shoulder of the avocado.

(8) *Damage*. "Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the individual fruit, or the general appearance of the fruits in the container. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(i) Cuts or other skin breaks when not healed and penetrating beneath the epidermis or the aggregate area exceeds the area of a rectangle one inch in length and one-eighth inch in width; or when healed and the appearance is materially affected.

(ii) Pulled stems when the exposed stem cavity is excessively deep, or when skin surrounding the stem cavity is more than slightly torn.

(iii) **Russetting or similar discolorations** when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown surface dis- [fol. 24] coloration aggregating 10 percent of the fruit surface.

(iv) **Scars or scab** when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown superficial, fairly smooth scars aggregating 10 percent of the fruit surface.

(v) **Sunburn** when the appearance of the avocado is affected to a greater extent than that of an avocado which has greenish-yellow colored sunburn aggregated 10 percent of the fruit surface.

(vi) **Sunscald or sprayburn** when not well-healed, or when soft, or when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown superficial, fairly smooth scars aggregating 10 percent of the fruit surface.

(9) *Fairly well formed.* "Fairly well formed" means that the avocado may be slightly abnormal in shape but not to the extent that the appearance is seriously affected.

(10) *Fairly well colored.* "Fairly well colored" means that the avocado shows a shade of color which is fairly characteristic of the variety.

(11) *Serious damage.* "Serious damage" means any defect which seriously affects the appearance, or the edible or shipping quality of the individual fruit, or the general appearance of the avocados in the container. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(i) **Anthraxnose** when any spot exceeds the area of a circle one-fourth inch in diameter, or when more than 3 spots each exceeding the area of a circle three-sixteenths inch in diameter.

(ii) **Cuts or other skin breaks** when not healed and the aggregate area exceeds the area of a rectangle one inch

in length and one-fourth inch in width, or when not healed and penetrating into the flesh of the fruit, or when healed and the appearance is seriously affected.

(iii) Pulled stems when the skin surrounding the exposed stem cavity is torn more than an aggregate area of a circle one-fourth inch in diameter, or when flesh is torn.

(iv) Russeting or similar discoloration when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown surface discoloration aggregating 25 percent of the fruit surface.

(v) Scars or scab when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown superficial, fairly smooth scars aggregating 25 percent of the fruit surface.

(vi) Sunburn when the appearance of the avocado is affected to a greater extent than that of an avocado which has greenish-yellow colored sunburn aggregating 25 percent of the fruit surface.

(vii) Sunscald or sprayburn when not well-healed, or when soft, or when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown superficial, fairly smooth scars aggregating 25 percent of the fruit surface.

(viii) Cercospora spot when any spot exceeds the area of a circle $\frac{1}{4}$ inch in diameter or when more than three spots each of which exceeds the area of a circle $\frac{3}{16}$ inch in diameter, or when the aggregate area of all spots exceeds the area of a circle 1 inch in diameter.

(12) *Badly misshapen*. "Badly misshapen" means that the avocado is so badly curved, constricted, pointed or otherwise deformed that the appearance is very seriously affected.

(13) *Very serious damage*. "Very serious damage" means any defect which very seriously affects the appearance, or the edible or shipping quality of the avocado. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum al-

lowed for any one defect, shall be considered as very serious damage:

(i) Cuts or other skin breaks when not healed and penetrating into the flesh of the fruit, or any skin break very seriously affecting the appearance, or the edible or shipping quality.

(ii) Pulled stems when the skin surrounding the exposed stem cavity is torn more than an aggregate area of a circle one-half inch in diameter, or when the flesh is torn.

(iii) Russetting or similar discoloration when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown surface discoloration aggregating 50 per cent of the fruit surface.

(iv) Scars or scab when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown superficial, fairly smooth scars aggregating 50 per cent of the fruit surface.

(v) Sunburn when the appearance of the avocado is affected to a greater extent than that of an avocado which has greenish-yellow colored sunburn aggregating 50 per cent of the fruit surface.

(vi) Sunscald or sprayburn when not well healed, or when the appearance of the avocado is affected to a greater extent than that of an avocado which has light-brown superficial, fairly smooth scars aggregating 50 per cent of the fruit surface.

[fol. 27] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

No. 7648 Civil Action

[Title omitted]

ANSWER—Filed December 6, 1957

Come now W. C. Jacobsen, Director of Agriculture, State of California, Goodwin J. Knight, Governor of the State of California, and Edmund G. Brown, Attorney General, State of California, and for their causes of defense allege as follows:

First Defense

That the complaint fails to state a claim against these answering defendants upon which relief can be granted.

[fol. 28]

Second Defense

That the above-entitled court lacks jurisdiction over the subject matter set forth in plaintiffs' complaint, or at all.

Third Defense

That these answering defendants admit the allegations contained in paragraphs II, V, VI, VIII, IX, X, XI, XVII, XVIII, XIX, XX, and XXI of plaintiffs' complaint; that these answering defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs I, VII, XII, XIII, XIV, XXII, XXIV (being paragraph numbered XXIV and appearing on lines 16 to 24, page 11, plaintiffs' complaint), and XXVII of plaintiffs' complaint and on said ground deny the truth of each and every allegation contained in said paragraphs; that these answering defendants deny each and every allegation contained in paragraphs III, IV, XVI, XXIII, XXIV (being paragraph numbered XXIV and appearing on lines 26 to 32, page 11,

and lines 1 to 10, page 12, plaintiffs' complaint), XXVIII, XXIX, XXX, XXXI, and XXXII of plaintiffs' complaint; that these answering defendants admit the allegations contained in lines 29 to 32, page 7, and lines 1 to 10, page 8, ending with "February," of paragraph XV of plaintiffs' complaint, and deny each and every allegation contained in lines 10 to 19, page 8, beginning with "Thus" on line 10, page 8, and ending with "California" on line 19, page 8, of paragraph XV of plaintiffs' complaint; that these answering defendants deny each and every allegation contained in paragraph XXVI of plaintiffs' complaint excepting that defendants admit that they have in the past and now stand ready to perform their duties under their oath of office should they acquire knowledge of violations of the Agricultural Code of the State of California.

[fol. 29]

Fourth Defense

That the federal courts have adopted the salutary policy of judicial self-restraint in suspending or enjoining enforcement of state statutes alleged to be unconstitutional on the ground that a complainant might be civilly or criminally prosecuted for violation of them, where the state court, which has the last word on the construction and meaning of the statute, has never passed upon the statute attached. In the absence of a showing that the danger of irreparable loss is both great and immediate, plaintiffs herein should first set up the invalidity of the statute in the state court, even though the validity of the statute is challenged, since there is ample opportunity for ultimate review by the United States Supreme Court of federal questions after decision by the state court.

Fifth Defense

That sections 784 and 792, California Agricultural Code, constitute a legitimate and proper exercise of the state police power and are intended to protect the public health by preventing the marketing of immature, unwholesome avocados which are unfit for human consumption, and to protect the general prosperity and welfare of the important California avocado industry by preventing the marketing

of immature, unwholesome avocados, thus maintaining the industry reputation and consumer and trade market demand for mature, wholesome, nutritious avocados.

Wherefore, defendants pray:

1. That the plaintiffs' complaint be dismissed;
2. That sections 784 and 792, California Agricultural Code, be declared valid and subsisting statutes which are applicable to all avocados prepared, packed, placed, de-[fol. 30] livered for shipment, delivered for sale, loaded, shipped, transported or sold in bulk or in containers within the State of California;
3. That the defendants be granted such other relief in the premises as the court may deem just and proper;
4. That the court award to defendants their costs.

Dated: December 6, 1957.

Edmund G. Brown, Attorney General of the State of California, John Fourt, Deputy Attorney General, By John Fourt, Attorneys for Defendants.

Affidavit of Service by Mail (omitted in printing).

[fol. 36]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

[Title omitted]

INTERROGATORIES PROPOUNDED BY PLAINTIFFS TO THE
DEFENDANT W. C. JACOBSEN—Filed February 24, 1958

Pursuant to rule 33 of the Rules of Civil Procedure for the United States District Courts, the defendant W. C. Jacobsen, Director of the Department of Agriculture of the State of California, is hereby requested by the plaintiffs herein to answer under oath within the time provided by said rule 33 each of the following interrogatories:

Interrogatory No. 1

Does the California Department of Agriculture maintain a Bureau of Agricultural Statistics, a Bureau of Market News, and a Crop and Livestock Reporting Service, and if so what are the functions of these bureaus and services?

[fol. 37]

Interrogatory No. 2

Does the Department of Agriculture of California, either alone or jointly with the United States Department of Agriculture, keep records of the quantities of various crops produced in California, in particular fruit crops, the quantities of each such crop received and unloaded at wholesale markets within the state, and the quantities of each such crop shipped out of the state?

Interrogatory No. 3

With particular reference to avocados grown in California, do the records of the California Department of Agriculture account for all such avocados received and unloaded at wholesale markets within the state, or only a portion thereof?

Interrogatory No. 4

In the three years from October 1, 1954 to September 30, 1957, what were the monthly receipts and unloads of avocados at the Los Angeles, Oakland and San Francisco wholesale markets, so far as shown by the records of the California Department of Agriculture (or records kept by the joint Federal-State Market News Service)?

Interrogatory No. 5

In each month of the three-year period from October 1, 1954 to September 30, 1957, what quantities of avocados grown in California were shipped out of the state, so far as shown by the aforesaid records?

Interrogatory No. 6

If the answers to Interrogatories Nos. 4 and 5 are given in carlot equivalents, by what mathematical formula are carlots convertible into tons?

Interrogatory No. 7

What was the total production of avocados in California in the crops years 1954-1955, 1955-1956 and 1956-1957, as shown by the crop production records of the California [fol. 38] Department of Agriculture (or records kept jointly by the United States Department of Agriculture and the California Department of Agriculture)?

Interrogatory No. 8

What was the total production of avocados in California, and the percentage of such production to the total production of avocados in the United States, as shown by the aforesaid records, in the 10-year period from 1945 to 1954, also in each of the crop years 1954-1955, 1955-1956 and 1956-1957?

Florida Lime and Avocado Growers, Inc. and South Florida Growers Association, Inc., plaintiffs, by Isaac E. Ferguson, attorney for plaintiffs.

Acknowledgment of Service (omitted in printing).

[fol. 39] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN DIVISION

No. 7648 Civil Action

[Title omitted]

ANSWERS OF DEFENDANT W. C. JACOBSEN TO INTERROGATORIES
PROPOUNDED BY PLAINTIFFS—Filed March 6, 1958

Answer to Interrogatory No. 1:

The California Department of Agriculture maintains a Bureau of Agricultural Statistics. This Bureau is a part of the California Crop and Livestock Reporting Service, which is supported jointly under a cooperative agreement between the California Department of Agriculture and the

United States Department of Agriculture. The function of the California Crop and Livestock Reporting Service is to collect, analyze and publish statistical data for the State of California relating to the production, price, value, stocks, [fol. 40] and utilization of crops, livestock and other agricultural products of California. Estimates of State totals and averages for the above items have been designated as part of the Federal program of Agricultural Statistics of the United States Department of Agriculture. As such, these estimates are compiled in accordance with the established policies and procedures of the Crop Reporting Board of the United States Department of Agriculture, and are approved by the said Crop Reporting Board before release.

The California Department of Agriculture also maintains a Bureau of Market News. This work is carried on under a cooperative agreement between the California Department of Agriculture and the United States Department of Agriculture under the official operating title of "Federal-State Market News Service." The function of the Federal Market News Service is to collect and disseminate current information relative to market prices, supply, demand, shipping movement and storage of agricultural commodities.

Answer to Interrogatory No. 2:

The California Crop and Livestock Reporting Service prepares estimates of quantities of the principal crops, including avocados and other fruit crops, produced in California. Such estimates of the total production for the State of California are approved by the Crop Reporting Board of the United States Department of Agriculture before release and publication, and are authorized as the official estimates for the State by the California Department of Agriculture and by the United States Department of Agriculture.

The Federal-State Market News Service compiles receipts and unload records which show the quantities of certain fruits and vegetables unloaded in the wholesale terminal market centers at Los Angeles, San Francisco, Oakland, and at other wholesale locations in these metro-

politan areas as are practicable to be tabulated. The Federal-State Market News Service does not keep records of quantities of fruits and vegetables unloaded at other wholesale markets within the State. The Federal-State Market News Service keeps records on the quantity of about 45 different fruits and vegetables shipped by rail, but these records do not include avocados. The Federal-State Market News Service keeps records on the quantity of about 33 different fruits and vegetables shipped out of state by truck. Records are kept on the quantity of avocados shipped out of state by truck.

Answer to Interrogatory No. 3:

With reference to avocados grown in California, the records of the Federal-State Market News Service do not account for all avocados grown in California and received and unloaded at wholesale markets within the State, but only account for a portion thereof. As a part of a national program, the avocados unload records which are compiled at the Los Angeles, San Francisco and Oakland wholesale market centers are designed to measure the quantities of avocados entering the wholesale market channels at the specific market centers for which such data are tabulated. On that basis, the unload data are believed to be substantially complete, but the Federal-State Market News Service makes no claim that the unload data for these specific markets measure the total quantities entering consumption channels. The purpose of the unload data at these three wholesale market centers is to provide buyers and sellers with a timely measure of supply available for trading each day. [fol. 42] The Federal-State Market News Service does not compile records of receipts or unloads of California-grown avocados at any other points in the State of California.

Answer to Interrogatory No. 4:

The attached tables Numbered 1, 2, and 3 show unloads of avocados at Los Angeles, San Francisco, and Oakland for the period October 1, 1954, through September 30, 1957, by months. These tables were prepared from the 1954, 1955, 1956, and 1957 annual reports entitled "Unloads of

Fresh Fruits and Vegetables? issued by the Los Angeles and San Francisco offices of the Federal-State Market News Service.

Answer to Interrogatory No. 5:

Since records of rail shipments of avocados are not maintained by the Federal-State Market News Service, the California Department of Agriculture cannot submit complete information showing quantities of California-grown avocados shipped out of the State of California. The information available is limited to the quantities of avocados shipped out of the State of California by truck. Table 4 attached shows the truck shipments of avocados out of the State of California.

Answer to Interrogatory No. 6:

As indicated above, the answers to Interrogatories Nos. 4 and 5 are given in carlot equivalents. The California Department of Agriculture does not have an official mathematical formula by which carlots are converted to tons. The basic unit used by the Federal-State Market News Service to measure volume of fresh fruits and vegetables moving to market is in terms of rail cars. Quantities of fresh fruits and vegetables arriving at terminal markets [fol. 43] by motor truck are first tabulated in terms of numbers of packages. The numbers of the various types of packages are converted to rail carlot equivalents to provide a unit of measure comparable with the rail shipments. Some quantities of fresh fruits and vegetables are received at terminal markets in loose unpacked form. The weight of these loose unpacked commodities is converted to an equivalent number of a standard container, which in turn is converted to carlot equivalents.

The factors for converting the quantity of fresh fruits and vegetables arriving at terminal markets by motor truck are established by the United States Department of Agriculture to provide a uniform nationwide unit of measure. The conversion factors for avocados are listed below. The Federal-State Market News Service does not attempt to con-

vert packed California flats or Los Angeles lugs of avocados into pounds or tons per car.

California Avocados

California Flat ($3\frac{3}{4}$ " or $4\frac{1}{2}$ " x $13\frac{1}{2}$ " x $16\frac{1}{8}$ ")—

1,750 per carlot

L.A. Lug

900 " "

Loose unpacked avocados

13 pounds per California Flat

25 pounds per L.A. Lug

Florida Avocados

Florida Flat ($3\frac{3}{4}$ " x $11\frac{1}{2}$ " x 14")

1,300 per carlot

The quantities of avocados shipped out of the State of California by motor truck are tabulated in terms of numbers of packages with no segregation as to the type of package. Considering an approximate average of all types of packages most commonly used, the Federal-State Market News [fol. 44] Service has determined that 1,600 packages of avocados shipped out of the State by motor truck would be approximately equal to one rail carlot.

On the basis of the above weights per container and conversion factors, one carlot equivalent would be equal to approximately 11.3 tons of avocados.

Answer to Interrogatory No. 7:

According to the published records of the Crop Reporting Board of the United States Department of Agriculture, the total production of avocados in California for the crop years 1954-55, 1955-56, and 1956-57, were as follows:

Crop Year	Production of Avocados in California
1954-55	45,200 tons
1955-56	20,000 tons
1956-57	14,700 tons

Answer to Interrogatory No. 8:

According to the published records of the Crop Reporting Board of the United States Department of Agriculture,

the total production of avocados in California and the United States for the crop years 1944-45 to 1956-57 and the percentage California production was of United States production for these crop years is as follows:
[fol. 45]

Crop Year	Production of Avocados in:		California production as a Percentage of United States Production Percent
	California Tons	United States Tons	
1944-45	11,600	17,400	67
1945-46	24,000	27,200	88
1946-47	18,500	20,100	92
1947-48	18,600	20,900	89
1948-49	14,400	17,500	82
1949-50	15,500	20,500	76
1950-51	22,400	27,900	80
1951-52	28,000	34,500	81
1952-53	23,200	31,900	73
1953-54	21,300	31,900	67
Total above			
10 Years	197,500	249,800	79
1954-55	45,200	57,000	79
1955-56	20,000	34,300	58
1956-57	14,700	25,500	58

As stated in Interrogatory No. 1, the estimates of the Crop Reporting Board for the State of California are recognized as the official estimates for California by the Director of Agriculture, State of California.

W. C. Jacobsen

Subscribed and sworn to before me this 6th day of March, 1958.

Anne Marie Wise, Notary Public in and for the County of Sacramento, State of California. My Commission Expires February 25, 1960.